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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	No. CR 12-00723 EJD
)	
Plaintiff,)	UNITED STATES' OPPOSITION TO
)	DEFENDANT'S MOTION TO CONTINUE
v.)	HEARING AND SENTENCING
)	
JOSE FARIAS BARAJAS,)	
)	
Defendant.)	

The government opposes defendant Jose Barajas's motion to continue the hearing regarding the psychologist's report and the defendant's sentencing, both of which are less than a week away (Monday, September 14, 2015). The requested continuance is the latest in a string of delays by the defense that have prevented the victim's family from obtaining some bit of closure in this case. The time period requested by the defense is particularly inconvenient to the government attorney due to two trials scheduled before the Court: one in mid-October and one in mid-November. The government requests that the hearing proceed as scheduled and if at the end of the hearing, the defense wishes to seek to supplement the record, it show good cause. Absent such a showing, the sentencing should proceed as scheduled later that afternoon. After the hearing, the Court will be in a better position to judge whether it requires additional information from the defense expert.

OPPN. TO MOTION TO CONTINUE EXPERT HEARING AND SENTENCING
CR 12-00723 EJD

1 The following procedural history in the case demonstrates that the sentencing in this case has
2 been delayed long enough for a diligent defense:

3 Barajas entered his guilty plea on March 20, 2014. Docket No. 72. Recognizing that the
4 defendant was facing a significant sentence, and to give defense counsel additional time to prepare for
5 sentencing, the original sentencing date was set for October 7, 2014.¹ At the defendant's request, on
6 September 30, 2014, the parties stipulated to a continuance of the sentencing date to January 29, 2015.
7 Docket No. 78. The basis for the continuance was the need for the defense to conduct "sentencing
8 related investigation and evaluations." *Id.* at ¶ 2. The Court granted this request.

9 Defendant then sought an additional two-month continuance of the sentencing because the
10 psychologist retained by the defense needed more time to conduct his evaluation of the defendant.
11 Docket No. 84. The Court granted the defendant's request over the government's objection. Docket
12 No. 87. The new sentencing date was March 26, 2015.

13 On March 13, 2015, the defense psychologist completed his report and a copy was provided to
14 the government and the United States Probation Department ("Probation"). The parties stipulated to
15 continue the sentencing for an additional two months so that Probation could complete an amended PSR
16 that took into account the report and so that the government could evaluate the report and determine if it
17 would seek to retain an expert. Docket No. 102. The new sentencing date was eventually set for May
18 22, 2015. Prior to the sentencing date, the government made a number of attempts to schedule a
19 meeting with the defense expert psychologist via defense counsel, who expressed a willingness to do so,
20 but never actually produced the expert to speak to the government.

21 The parties filed their respective sentencing memoranda on May 14, 2015, and appeared for
22 sentencing on May 22, 2015. On May 22, 2015, the government requested a hearing to examine the
23 defense psychologist regarding his report. The Court set the hearing for September 14, 2015, which date
24 was designed to give the parties an opportunity to attempt to resolve the government's questions and
25 concerns about the psychological report.

26
27
28 ¹ Co-defendant Rodriguez pled guilty March 26, 2014, and was similarly given additional time to
prepare for sentencing, including a later stipulated continuance. He was eventually sentenced on
January 29, 2015.

